IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28/02/2003

CORAM

THE HONOURABLE MR. JUSTICE K.P.SIVASUBRAMANIAM

WRIT PETITION No.34449 of 2002

Church of God (Full Gospel)
In India rep., by its State Council
Chairman P.Wellesly Solomon .. Petitioner

-Vs-

1.The Government of Tamil Nadu
Rep., by its Secretary, Housing and
Municipal Administration (N.V.6)
Department, Fort St. George,
Chennai-600 009.

2.The Chennai Metropolitan Development
Authority, rep., by its Member
Secretary, Thalamuthu Natarajan
Building, No.8, Gandhi Irwin Road,
Chennai-600 008.

3.The Commissioner,
Madhavaram Municipality,
Madhawaram, Chennai-600 060.

4.The District Collector,
Thiruvallur District.

5.The President,
K.K.R.Majestic Colony Welfare
Association, 74 K.K.R. Nagar,
Madhawaram,
Chennai-600 060. .. Respondents

Writ petition filed under Article 226 of the Constitution of
India praying for the issue of a Writ of Certiorarified Mandamus for the
reasons stated therein.

For petitioner : Mr.R.Gandhi, Senior Counsel
for M/s.V.Vasista and

P.S.Vasanthakumar

For respondents-1,3&4 : Mr.V.Subbarayan
respondent -2 : Mr.V.Perumal

:O R D E R

This writ petition is filed by
a religious institution, Church of God, Purasawakkam, Chennai. The petitioner prays for a Writ of Certiorarified Mandamus to call for the records relating to the order of the second respondent in his letter dated 22.3.2001 and the order passed by the first respondent in G.O.(D) No.594, Housing-cumMunicipal

Administration Department dated 23.7.2002 to quash the same and to direct the second respondent to consider the petitioner's application for regularisation dated 29.5.2001.

2. The petitioner contends
that the petitioner is a registered society under the provisions of Societies Registration Act, 1860. The petitioner is engaged in establishment of Health Care Centres throughout Tamil Nadu and had established 215 Churches in Tamil Nadu. In Chennai, 33 Churches are under the control of the petitioner. The petitioner is an international organisation devoted to religious service. The property in question of an extent of 31295 sq. ft. in plot No.8 4, KKR Majestic Colony was purchased on 16.9.1994. The area falls within industrial and residential area and the Church established thereunder has been functioning from 1995. The Church has a fully closed prayer house and prayers are being offered within the four walls of the Church and loud speakers have been kept inside the premises for audibility to the members within the Church. While so, the fifth respondent filed Crl.O.P.No.61 of 1998 before this Court praying for a direction to the police authorities to take action against the petitioner alleging that there was noise pollution. The petitioner opposed the petition and contended that they have not fixed any loud speaker outside the Church and that the complaint itself was motivated. By judgment dated 19.4.1992, after taking note of the report submitted by the Pollution Control Board, learned single Judge held that the noise level was not solely on account of the petitioner's Church but also due to interference of the noise of the vehicles plying on the high road. The police authorities were directed to follow the rules and the directions contained in the judgment of a Division Bench of this Court in Apparao vs. Government of Tamil Nadu (1995 WLR Page 157). This Court further directed that if there was loud noise exceeding the permitted limits, the Church has to be directed to keep the speakers at lower level. The petitioner preferred an appeal before the Supreme Court in Criminal Appeal No.732 of 2000 as against the judgment in Criminal O.P.No.61 of 1998. The judgment of this Court was upheld by the Supreme Court by order dated 30.8.2000 and it was held that the directions and the guidelines in Apparao's case and the rules and regulations have to be strictly complied with.

3. The petitioner further submits that they have not violated the permissible noise level till date and that the prayer meetings are being carried on Sundays between 8.30 A.M. and 12.30 P.M. and there has been no complaint either from the Pollution Control Board, local people or police authorities.

4. By proceedings dated 13.5.1999, the petitioner was informed by the third respondent that the construction put up in the plot was in violation of the approved building plan and that the Government had issued G.O.Ms.No.76 dated 27.2.1999 and that the CMDA had also issued directions dated 8.3.1999 for regularisation of constructions already completed. The petitioner was advised to avail the said scheme which will be available only till 29.5.1999 and to seek for regularisation of the construction. Accordingly, the petitioner applied for regularisation of the existing prayer hall and remitted the requisite fee of Rs.1,700/- and a further sum of Rs.11,150/- towards regularisation fee. However, the application was rejected on the ground that the appeal filed by the petitioner before the Supreme Court has been dismissed. The petitioner contends that the reason given by the respondent was baseless as the judgment in the Criminal appeal had absolutely no bearing on the application submitted by the petitioner for regularisation.

5. Thereupon an appeal was filed by the petitioner under Section 113 (A) of the Tamil Nadu Town and Country Planning Act, 16.4.2001. The first respondent without affording any opportunity to the petitioner, by a short order in G.O.(D) No.594 dated 23.7.2002 dismissed the appeal filed by the petitioner by confirming the order stated above. Hence, the above writ petition.

6. In the counter filed by the second respondent, the Metropolitan Development Authority, it is contended that the petitioner had applied for regularisation on 16.7.1999 for regularising the construction of the prayer hall. The application was rejected by the District Collector, Tiruvallur dated 17.11.2000, informing that "No Objection Certificate" could not be processed in view of the judgment of the Supreme Court in Criminal Appeal No.732 of 2000. It is further stated that while disposing of Criminal O.P.No.61 of 1998, though directions were given to the police to take necessary steps to control the noise level, no direction was given by the learned Judge, for regularisation of the prayer hall. It is further submitted that the K.K.R. Majestic Colony Welfare Association (5th respondent) had sent an objection letter dated 15.10.1999, objecting to the regularisation and they have also mentioned that the petitioner was convicted by the Criminal Court for misusing the residential premises at plot No.84 as a place for public worship in contravention of the municipal approval plan. Therefore, the respondents had rejected the application for regularisation.

7. The fifth respondent who had objected to the processing of the regularisation application of the petitioner, has also filed a counter contending that the petitioner's conduct

resulting in noise pollution and the change of user as a place were illegal. The trouble started when the petitioner chose to establish a place of worship in a purely residential lay out and were causing unwanted nuisance by fixing cone speakers and amplifiers. Added to the high volume of noise level already existing, the petitioner constituted further nuisance. The respondent Association was formed for the welfare of the residents and to seek abatement of the nuisance. On the failure of the police machinery to redress their grievance, they had approached this Court for giving suitable directions under Section 482 of Cr.P.C. Crl.O.P.No.61 of 1998 was allowed with directions to the police to follow the guidelines issued by the Division Bench in Apparao's case and to take necessary steps to bring down the noise level. The petitioner's appeal to the Supreme Court was also rejected.

8. The respondent also denies the contention of the petitioners that the noise level was being kept at the minimum and permitted level. In spite of repeated objections, the petitioner was periodically exceeding the permitted limits and whenever police complaint is given, on the very next day after the police leave the premises, the petitioner indulges in resuming loud noise level much above the prohibited limit. The majority of the residents are objecting to the activities of the petitioner Church. Within the vicinity of the premises there are houses belonging to Hindus and as such, the noisy prayers which are against Hindu faith, disturb the peace of the colony. It is also stated that forced religious conversions also regularly take place on 15th of August and 26th of January. Therefore the decision of the CMDA/Government was in the right direction and was unbiased, as their decision was to enforce the law. Therefore the various grounds alleged by the petitioner were not tenable. The writ petition was not bona fide. The petitioner seeks to do things in a surreptitious way what he cannot legitimately do. Any construction must conform to the mode of user for which a sanctioned plan has to be issued. The plot on which the present place of worship is located is no t meant for the said purpose. The petitioner could not have obtained the permission for the construction if he had correctly indicated the purpose for which the building was being constructed.

9. Mr.R.Gandhi, learned Senior Counsel appearing for the petitioner contended that the entire action of the respondents are motivated and impugned order is passed at the instance of the fifth respondent. The attitude of the fifth respondent was one of religious extremism and it is unfortunate that the official respondents should have succumbed to such illegal pressure without appreciating the scope of the proceedings which went on appeal before the Supreme Court. The Criminal Original Petition filed before this Court by the fifth respondent and the appeal filed thereon by the petitioner as against the order of this Court, related only to alleged violation of the provisions relating to Noise Pollution Control, in having allegedly exceeded the permitted noise level by using cone speakers. The said proceedings related only to the issue of noise pollution and the directions of this Court in the said context was only given to the police officials to take appropriate action to ensure that the noise level was kept within legal limits. The proceedings have nothing to do with the regularisation scheme. It was always open to the respondents or any

member of the public, to make appropriate complaint before the police, if there was any violation of the noise pollution regulations.

10. Learned counsel for the CMDA contends that considering the objections from the local people and the judgment of the Supreme Court in Criminal Appeal No.732 of 2000, it was decided by the Collector not to issue "No Objection Certificate". Therefore in order to maintain peace and law and order, it was decided not to issue "No Objection Certificate".

11. Mr.Kannan, learned counsel for the fifth respondent, contended very vehemently that the Town Planning authorities while sanctioning plan or while considering applications for regularisation, were also obliged to look into other complaints by the local citizens. Learned counsel in particular refers to Rule 7 of the Regularisation Rules viz., G.O.Ms.No.76, Housing and Urban Development Department dated 27.2.1999, which is as follows:-

"(1) The competent authority shall, on receipt of an application made under rule 3, examine the same with reference to the provisions of the Act or other laws, for the time being in force and rules and regulations made thereunder, call for any additional details or particulars, if necessary, and decide on the regularisability of the development. If it is found regularisable, the competent authority shall assess the regularisation fee and issue to the applicant a demand notice for the payment of regularisation fee along with other fees and charges normally leviable.

(2) On receipt of the demand notice, the applicant is liable to pay to the competent authority the regularisation fee and other charges within thirty days from the date of communication of the said demand notice. If payment is not made within the time stipulated above, it shall attract interest at the rate of six per cent per annum. If the above said amount is not remitted within ninety days from the date of receipt of the demand notice the deposit made under clause (b) of subrule (3) of rule 3 above, shall be forfeited and the planning permission shall be refused" (emphasis supplied)

12. Learned counsel refers to the expression "other laws" and would contend that as the petitioner was admittedly violating the provisions under the Pollution Control Acts, the second respondent was entitled to consider the same and to reject the application on the said ground. Therefore, according to the learned counsel, violation of Pollution Control regulations is also a relevant issue for considering the sanction of planning permission or application for regularisation. Even otherwise, according to the learned counsel, the area being a residential area, no permission can be granted for locating a place of worship. The petitioners did not disclose the reason for which the hall was being constructed. When the object of putting up of the hall was not properly disclosed as for locating a prayer hall, it was certainly open to the authorities to refuse the regularisation.

13. Learned counsel would also strongly urge that the refusal by the second respondent to grant regularisation on the ground that there was noise pollution was a welcome

measure and Town Planning Authorities should perceive all issues which may give rise to violation of any legal provision and should not feel restricted only to provisions relating to Town and Country Planning Act or the Municipal Laws. Any situation which may give rise to serious law and order problem should also be considered. Consideration of the said issues were not outside the purview of the rules or the power vested on the respondents. Noise pollution is also an issue which should be considered while granting planning permission or considering application for regularisation.

14. I have considered the submissions of both sides. A perusal of the judgment delivered by this Court in Criminal O.P.No.61 of 1998 filed by the fifth respondent and the judgment in the appeal by the Supreme Court in Criminal Appeal No.732 of 2000 clearly disclose that the only issue which was raised and considered was noise pollution allegedly created by the petitioner/church. Following the judgment in Apparao's case, the learned Single Judge of this Court held that if the noise created by the petitioner exceeded the permissible limits, then it has to be abated. The learned Judge also found that as per the findings of the Pollution Control Board, the petitioner alone was not the sole contributor to the noise level but there were also other factors such as noise created by vehicles which was mostly responsible. In the end, the learned Judge directed strict compliance of the directions contained in Apparao's case and directed the petitioner to keep their speakers at a lower level. On appeal also, the Supreme Court confirmed the order of the High Court. Therefore, it does not require repeated emphasis that the only issue dealt with by this Court and the Supreme Court in the criminal proceedings was the alleged noise pollution and it is further more important to bear in mind that all that the petitioner was directed was to lower the noise level and that the usage of the loud speakers and voice amplifiers should strictly conform to the requirements under the Madras Town Nuisance Act, 1889 and Noise Pollution (Regulation and Control) Rules, 2000. In fact, both the Courts have not restrained or prohibited the petitioner from using the premises as a prayer hall. Such an issue never arose for consideration. Therefore the stand taken by the respondents is without any basis and cannot be sustained. In the impugned order reliance is placed on the judgments of the Supreme Court and the High Court for refusing to consider the regularisation application while the said judgments have nothing to do with the application for regularisation. It is rather strange that the authorities should have chosen to rely on the judgments as though there was a direction to the petitioners to stop their prayer activities or to reject the application for regularisation. The only embargo on the petitioner is as regards the manner of usage of the loud speakers and the voice amplifiers. There is no direction to the petitioners not to perform any prayers. The only direction is that in doing so, the petitioner shall comply with the statutory requirements as aforementioned and the guidelines contained in Apparao's case. Therefore, reference to the judgment of the Supreme Court for rejecting the application for regularisation is very improper and discloses total non application of mind. The respondents appear to have taken this stand due to pressure from the fifth respondent.

15. Law and order is an issue for the police to look after as directed by the High Court and the Supreme Court in

the criminal proceedings. If the kind of objections as in this case are to be entertained and upheld as under the impugned order, sooner we can expect the already existing communal and religious tensions to grow further in different dimensions, namely different communities/religious organisations indulging in mutual and baseless objections even for any harmless and normal religious activity or construction being put up by any religious institution. If there is noise pollution, there are specific authorities to deal with it and the town planning authorities dealing with building regulations have no role to play on the said issue.

16. I am unable to sustain the contentions of the learned counsel for the fifth respondent that the expression "Other Laws" in Rule 7 of the Regularisation Rules, 1999, would take within its meaning any and every provision of law and need not be restricted to Town and Country Planning Act alone (TCP Act). It is needless to mention that the rules made under an Act cannot go beyond or over step the limits of the parent Act itself. TCP Act 1971 has been enacted to provide for planning the development and use of rural and urban land in the State and for the purposes connected therewith. The Rules made thereunder can also relate only to those matters or issues which are dealt with under the Act. The word "development" has been defined under Section 2(13) of the Act, as follows:-

"(13) "development" means the carrying out of all or any of the works contemplated in a regional plan, master plan, detailed development plan or a new town development plan prepared under this Act, and shall include the carrying out of building, engineering, mining or other operations in, or over or under land, or the making of any material change the use of any building or land:

Provided that for the purposes of this Act, the following operations or uses of land shall not be deemed to involve development of the land that is to say--

(a) the carrying out of any temporary works for the maintenance, improvement or other alteration of any building, being works which do not materially affect the external appearance of the building;

(b) the carrying out by a local authority of any temporary works required for the maintenance or improvement of a road, or works carried out on land within the boundaries of the road;

) the carrying out by a local authority or statutory undertaker of any temporary works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus, including the breaking open of any street or other land for that purpose;

(d) the use of any buidling or other land within the cartilage of a dwelling house for any purpose incidental to the enjoyment of the welling house as such; and

(e) the use of any land for the purpose of agriculture, gardening or forestry (including afforestation) and the use for any purpose specified in this clause of this proviso of any building occupied together with the land so used;"

17. A perusal of the above quoted provision would clearly show that the Act is concerned only with developmental activities, viz., original plan, regional plan, master plan and detailed

development plan and carrying out any building, engineering and mining operations and making any material change in the usage of the building or the land. Even in respect of those areas of operations , the proviso excludes temporary works which do not materially affect the external appearance of the building. Therefore, when the scope of the Act itself is narrow and well defined, the expression "Other Laws" in the rules, cannot have the effect of vesting any power on the authority under the Act to go beyond the Act and Rules and deal with issues which do not fall within their power or jurisdiction. The expression "Other Laws", is subject to the rule of "Ejusdem Generis" (of the same kind or nature) and has to be interpreted as limited to things or issues of the same kind or nature as specified or dealt with under TCP Act. There is sufficient indication in the Act itself of the area of its application and what the Act proposes to regulate. The issues dealt with under the Act belong to a class or genus and hence the authorities cannot arrogate themselves as having the power to implement and execute the provisions of other Acts like the City Police Act, District Police Act or the Rules and Regulations framed thereunder or the Pollution Control Act. There are other specified authorities to implement those provisions and take action against violations of the said Acts and Rules wherever and whenever complaints of violations are brought to their notice. Hence the reason given for rejecting the application for regularisation is totally irrelevant disclosing non-application of mind and beyond the jurisdiction of the respondents.

18. Even assuming for a moment that the respondents herein can also require the applicant to comply with the provisions relating to Anti Pollution Act and Regulations, all that could be done is to grant regularisation, subject to an undertaking being filed by the applicant with them to strictly comply with the Anti Pollution Laws and the directions of the Supreme Court. As already stated, this Court and the Supreme Court have only directed the petitioner to comply with the requirements under the noise pollution regulations strictly. The petitioner had not been restrained from carrying on with their activity. Therefore the impugned order over reaches and is violative of the order of this Court and the Supreme Court.

19. Learned counsel for the fifth respondent also contends that there are other objections relating to violations of building regulations in the construction put up by the petitioner and such objections have to be considered by the respondents. In this writ petition, this Court is not concerned with such objections considering that the only reason given in the impugned order is the alleged violation of noise pollution control regulations and the order passed by the Supreme Court. No other reasons have been stated. It is certainly open to the respondents to reject the application for regularisation if it does not satisfy the requirements and terms of the scheme for regularisation.

20. While parting with this case, I am also inclined to caution the petitioners as well as such regligious enthusiasts/ fundamentalists, to practice their respective faith in a cultured way and not to resort to aggressive or unfair methods and resorting to a method of worship which is inhuman. God, to whichever religion He belongs to,

is said to be present everywhere and does not require a blaring and deafening amplifier to hear the prayer of his devotees. The nature of evil and adverse effects which noise pollution causes to the children, aged, sickly, pregnant women and even normal individuals and how it disturbs the student community etc., have been repeatedly emphasised with scientific facts and figures, any number of times in newspapers, magazines, health journals and other media. Whether any individual has a legal or fundamental right to affect the body and mind of another person has been dealt with in detail by the Division Bench in Apparao's case and by the Supreme Court in the very appeal by the petitioner and there is no need to repeat them. Suffice it to say that religious faith existed and flourished in the past during several centuries in a better manner without the aid of amplifiers or other gadjets which have come into being only during the past few years. Belief in religion is and should remain a private and personal affair. When it crosses the four walls of the house or the place of worship and becomes a public issue, it is the singular most factor and root cause for all the violence, extremism, terrorism and strife we are now witnessing, national and international. The amplifiers probably signify the growing trend of intolerance between different groups. Religion is not a trade requiring advertisement by amplifiers. It is a pity that the police as well as the Pollution Control authorities are yet to strictly implement the rules and regulations in spite of repeated directions by the Court and the Government. There is no impediment to enforce them provided the enforcement is carried out impartially and uniformly. Marriage halls also have become noisy with music parties forcing the invitees to run away at the earliest. Music and melody which should be soothening, instead make the audience frightened and terror stricken. It is paradoxical to claim that we are becoming more and more civilised and at the same time we indulge in such acts which are most uncivilised. Even animals run away from noisy areas. Not only animals in forests but also in zoos are protected from noise pollution because they cannot survive in noisy atmosphere. Motorists passing through the forest and protected areas are warned against using the horn and the visitors to the zoo are directed to pass through silently. Why should we human beings reduce ourselves to less than animals, is the question which the petitioners and their counterparts in other religions should address themselves.

21. With the result, the writ petition is allowed subject to the observations in para No.19 above. No costs. Consequently, connected WPMP Nos.51405 and 51406 of 2002 are closed.

Index : Yes
Internet: Yes

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To

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